



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL

EDMUND G. BROWN JR.
ATTORNEY GENERAL

February 4, 2010

The Board of Supervisors
San Luis Obispo County
Room D-430, County Government Center
San Luis Obispo, CA 93408

Re: Draft County Conservation and Open Space Element

Dear Members of the Board of Supervisors:

I have reviewed aspects of your proposed General Plan update and am concerned that it erects unjustified and burdensome barriers to solar and renewable commercial projects proposed for the county.

With respect, I urge the Board to modify the proposed General Plan update in such a way that solar and renewable energy is welcomed and encouraged.

The state has established important and ambitious goals of increasing our supply of renewable energy to 20 percent by 2010 and to 33 percent by 2020. Renewable energy reduces greenhouse gas emissions and is a central element of the state's greenhouse gas law, AB 32. It also reduces our dependence on foreign oil and assures a steady, uninterrupted supply of energy. Significantly, the renewable energy industry creates two to three times as many jobs as fossil fuel production.¹ Moreover, energy produced in California generates local tax revenues.

State policymakers have identified the Carrizo Plain as an area where renewable energy can be developed at reasonable cost and with modest environmental impacts, and the county itself recognizes that it has abundant resources that can be used to generate renewable energy (Energy Chapter, p. 5.1).

While there are significant challenges to meeting the state's renewable goals, the Governor, Legislature, utilities, private renewable energy companies and others have been engaged in serious, concerted efforts to overcome these hurdles. San Luis Obispo County should

¹ Wei et. al, Putting Renewables And Energy Efficiency To Work: How Many Jobs Can The Clean Energy Industry Generate In The US?, Energy Policy 38 (2010) 919-931.

join them by working to remove impediments to renewable development. Unfortunately, certain proposed amendments to the General Plan are likely to deter such development and tie the county's hands in approving valuable projects in the future. I note that the General Plan also contains many laudable features, including innovative strategies for promoting energy efficiency and conservation. While this letter is not intended as a comprehensive review of the proposed amendments, I ask you to consider the following main points.²

Requirement to Avoid or Mitigate Impacts

Under the California Environmental Quality Act (CEQA), the significant environmental impacts of a proposed project must be mitigated where feasible. However, the proposed General Plan amendments include a policy of meeting electricity needs through distributed power and larger scale renewables only where "impacts to resources can be avoided or mitigated." (Policy E.1.1 (c).) This and other language in the Energy Chapter could be interpreted to require the county to deny a proposed renewable energy facility if it is not possible to *fully* avoid or *fully* mitigate all environmental impacts of the project, even where the project will have many other positive environmental and other benefits for the county and state. I suggest that the county clarify this language to retain the flexibility to approve environmentally beneficial renewable energy facilities that incorporate feasible mitigation measures.

Important Agricultural Lands

The proposal would impose new restrictions on several categories of newly designated "important agricultural lands" and could be interpreted to prevent a renewable energy facility from being located on these lands. (Chapter 8, Goal 7, and Strategy SL 3.1.1). These lands include, among other things, land that is not commercially viable for agriculture without irrigation and cannot reasonably be expected to become viable due to lack of water. If the county retains the new designations, I recommend that it consider including an exemption that allows renewable energy facilities to be developed on these lands, or as an alternative, provide an exemption that allows renewable energy development to go forward with a requirement for full site reclamation when the development is removed.

Disturbed Lands

The Implementation Strategies for renewable energy development, which make it a priority to use "disturbed sites," do not refer to using land that was previously disturbed by agriculture. (E.6.2.3). The county should identify these lands as well as potential sites for renewable energy facilities, since they may be among the lands in the county that are the most appropriate for larger renewable energy facilities and where such facilities will have the least environmental impact.

² These comments are submitted pursuant to the Attorney General's independent power and duty to protect the natural resources of the State. (See Cal. Const., art. V., § 13; Cal. Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.)

Energy Siting Criteria; Facilities in View Corridors or Scenic Areas

The energy siting criteria contained under Goal 7 of the Energy Chapter appear to be directed exclusively at non-renewable projects. The only language stating this, however, is in the title of Goal 7. To avoid any potential for confusion, the County should expressly state in the Policies and Implementation Strategies under Goal 7 that these policies and strategies do not apply to renewable energy facilities, and also do not apply to electricity distribution or transmission facilities that are necessary for a renewable energy facility. Otherwise, these provisions could be interpreted to prohibit new renewable energy facilities in sensitive view corridors or scenic areas (which could encompass very large portions of the county), even if the project would not have a significant adverse visual impact.

Protection of Visual Resources

Goals 4 and 5 in the Visual Resources Chapter contain language that could be interpreted to preclude development if there is any impact on visual sensitive resource areas, scenic corridors, scenic vistas, or vista points, regardless of whether feasible mitigation measures to reduce these impacts have been adopted. The county should clarify that Goals 4 and 5 do not prohibit renewable energy projects from being sited in these areas if feasible mitigation is required to reduce or avoid significant adverse impacts.

If you have any questions, please do not hesitate to contact my office.

Sincerely,


EDMUND G. BROWN JR.

cc: James Caruso, Senior Planner